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ONE HUNDRED SIXTH CONGRESS

Congress of the United States

House of Representatives

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June 28, 2000

The Honorable Janet Reno
Attorney General
United States Department of Justice
Washington, D.C. 20530

Dear General Reno:

Given your obdurate refusal to follow the advice of FBI Director Louis Freeh, Task Force Special Agent in Charge James DeSarno, and Campaign Financing Task Force heads Charles La Bella and Robert Conrad, your decision to refrain from appointing a special counsel to investigate allegations of intimidation and obstruction of justice in the White House e-mail matter was not unexpected. Unfortunately, however, your decision opens the Justice Department to additional criticism and further scrutiny.

I suggested a special counsel for reasons similar to my request for an independent counsel in the Campaign Finance matter. In short, given the historical performance of your Justice Department in investigations involving the White House, I had serious concerns that the e-mail investigation would not be as thorough and independent as this matter requires. In the three months since I called for a special counsel (letter attached), your subordinates have not acted to dispel my concerns. Let me give you an example. Whenever we interview witnesses, we ask whether they have been interviewed by the Department of Justice or the Office of Independent Counsel. The following is a list of witnesses who had not been interviewed by the Justice Department and the date that the Committee learned they had not been interviewed:

Sally Paxton	June 22, 2000
Michelle Peterson	June 8, 2000
John Podesta	May 30, 2000
Virginia Apuzzo	May 24, 2000
Joe Vasta	June 26, 2000
Jim DeWire	June 15, 2000
Dorothy Cleal	May 15, 2000
Nell Doering	May 26, 2000
Adam Greenstone	May 22, 2000

Joseph Kouba
Christina VanFossan

May 12, 2000
May 31, 2000

Quite obviously, it is possible that they have now been interviewed. Nevertheless, it strikes me as somewhat odd that you would allow three or four months to pass before interviewing critically important individuals such as Sally Paxton, Michelle Peterson, John Podesta, Virginia Apuzzo, Joe Vasta, and Jim DeWire. Doubtless there are others not on this list, and I have chosen to omit from the list individuals interviewed by the Committee in March and April of this year (even though most of those individuals had not been interviewed either).

As you are aware, I have been critical that the Justice Department neglected to ask the President questions about foreign money in 1996, 1997, 1998, or 1999. I quite simply do not understand how you would tolerate such an investigation. I have also been critical that the Justice Department elected to refrain from asking the Vice President about the Hsi Lai Temple event for almost four years. It now appears that there is a similar reluctance to move forward vigorously with the e-mail investigation. Having been a prosecutor, you are well aware of the importance of moving swiftly to obtain testimony and documents. Although you frequently say that you will follow the evidence wherever it leads, there is frequently nothing to follow because you have not asked questions or requested documents. There is no clearer reason to appoint a special counsel to examine campaign finance matters than the fact that the Justice Department appears to be giving preferential treatment to the White House. Indeed, the only other explanation for failing to obtain documents from the White House on this matter is incompetence, and that hardly seems like a strong argument to avoid appointing a special counsel.

In the e-mail investigation, as in the Hsi Lai Temple matter or the President's close proximity to illegal foreign money, there appears to be no real effort to move expeditiously. Under normal circumstances, I would defer to the strategies of your career lawyers and I would have no reason to observe when you are talking to various potential witnesses. As we have seen in the campaign finance investigation, however, these are not normal circumstances. Indeed, there is a clear contrast between the speed of your actions when there is a need for damage control and the speed of your actions when a politically embarrassing situation arises. Consider the following:

- When it was reported last week that Robert Conrad had requested a special counsel to investigate possible instances of perjury by the Vice President, the Justice Department was complicit in the Vice President's release of a transcript of his most recent interview, and all documents referenced in that interview. This contrasts to your response when this Committee subpoenaed the same information on April 25, 2000. You told us that "disclosure of matters involving an open investigation would hurt that investigation and seriously interfere with the efforts of career prosecutors and career FBI agents to enforce federal law." One can only speculate as to what changed between this high-minded rationale for denying the Congressional request and the Vice President's desperate need for help in effecting his damage control strategy. Simply put, the question is why would you fail to comply with a

Congressional subpoena for documents that you have handled in such a way that a witness can share them with others under investigation or release to the public?

- When there was a public disclosure regarding Robert Conrad's purported request for a special counsel, it was immediately announced that Task Force attorneys would be polygraphed. The same was not required of Lee Radek, Eric Holder, or Richard Scruggs during previous leak investigations. (Indeed, in the case of your friend Mr. Scruggs, your Department found that he leaked sensitive information in order to make you look good in a book, but did little to discipline him.)
- When it was advantageous to investigate me on the basis of uncorroborated information provided by a former Democratic National Committee official, you compelled people to go before a grand jury within one week. This contrasts dramatically with the almost four years it took to ask the Vice President questions about the Hsi Lai Temple fundraiser.
- When a FLIR tape shedding light on the Waco tragedy emerged, you dispatched U.S. Marshals to seize the tape from the FBI headquarters the same day.
- When you found an embarrassing tidbit of information in the FBI interview of a former member of Congress, you had no qualms about moving to release the information expeditiously. In fact, your subordinates even gave the information to John Huang so he could criticize Congress in a public hearing.

There are many such examples. Each, in its own way, stands for the proposition that the Justice Department is a place where justice takes a back seat to politics. Indeed, if you contrast these actions with the nearly four-year delay in asking the Vice President about the Hsi Lai Temple event, it is easy to understand why I am so concerned.

Apart from your reluctance to interview witnesses, there is also another aspect of your investigation that is very troubling. On June 23, 2000, the Committee received documents relating to the failure of the Vice President's office to manage e-mail records. The documents received are extremely important, and I note that the Justice Department was also provided copies of the documents we received on June 23, 2000. This leads me to believe that your lawyers failed to act independently to compel production of the Vice President's documents. Indeed, when we learned of the existence of these documents, the Justice Department had not even spoken with the witness who informed us of the new information.

I can only speculate as to when you would have gotten around to asking the relevant questions. If the Hsi Lai Temple investigation is any guide, your lawyers would have gotten around to compelling answers to the question of where the documents were in approximately January of 2004. That date may seem fanciful, yet it is as far from the discovery that there were documents discussing the Vice President's e-mail problems as the Vice President's questioning was from the first reports of the Hsi Lai Temple fundraiser.

I am struck by the apparent failure of the Justice Department to follow up on this matter. It was clear, however, that the White House only produced the documents because the Committee discovered their existence and asked for them specifically. Apparently, a valid Congressional subpoena was not good enough -- asking for categories of documents yielded nothing, even though White House lawyers knew that they had information that should be turned over to Congress. It certainly appears that your lawyers would not have obtained the documents produced on June 23, 2000, but for the efforts of this Committee. That is far from acceptable. It leads to the more-than-reasonable conclusion that you are moving slowly on matters that involve the Vice President.

Another related matter of some importance is the revelation in the recently produced documents that "The OVP memorandum regarding the Vice President's computer problems has been cleared with Cheryl Mills' office." Given the paucity of interviews conducted by your subordinates, you may not be aware that Cheryl Mills is a central figure in the e-mail investigation. White House Counsel Charles Ruff explained the initial e-mail problem to her in 1998 when he first learned of it. She was in charge of determining the extent of the problem and whether there were any ramifications for document production. As we now know, Ms. Mills -- by incompetence or design -- may have prevented a number of investigative bodies, including Congress, the Justice Department, and Independent Counsels, from receiving subpoenaed documents. Indeed, any conclusion on any matter under investigation is suspect until the White House finishes its costly e-mail reconstruction project and produces documents relevant to earlier document requests. Having conducted interviews of Ms. Mills' subordinates, it is clear that Ms. Mills is the central figure in terms of the White House Counsel's Office failure to solve the e-mail problems or its failure to notify interested parties that documents were not being produced.

Perhaps Ms. Mills really was the only person in the White House at the time who was unable to understand the problem. Perhaps she is only guilty of incompetence. However, Cheryl Mills does not have a good record when it comes to the production of documents to investigative bodies. In 1995, a gym bag full of sensitive documents relating to Waco and Vincent Foster were stolen from Ms. Mills' car. In 1996, Ms. Mills argued that it might be racist to return the illegal contributions Charlie Trie had funnelled from a Buddhist cult to the President's legal defense fund. In 1997, Ms. Mills failed to produce a central piece of evidence pertaining to the investigation of the White House database. A recently published book also has disclosed that Ms. Mills argued that President Clinton should invoke Executive Privilege over the sessions in which he coached Betty Currie about upcoming testimony. Given Ms. Mills' track record regarding disclosure of information, she should obviously be a major focus of the Department's attention.

What troubles me the most with your investigation is that the Justice Department has already investigated Ms. Mills for failure to produce documents in a different case -- the White House Database case -- and it has given her a free pass. Now it is apparent that

you are dragging your feet on another investigation that involves Ms. Mills. It would seem to me that the emerging pattern and practice of failure to produce documents that seems to be tied closely to Ms. Mills would at least merit an aggressive investigation. Of course, Ms. Mills' conduct had far-reaching effects on the campaign finance investigation, as well as other investigations.

In addition to the investigative laxity regarding Ms. Mills, I am also concerned by new information produced to the Committee on June 23, 2000, that indicates that the Justice Department was told about the Vice President's e-mail problems in early 1999. In a draft May 3, 1999, memorandum to Virginia Apuzzo, Assistant to the President, the Associate Director of the Information Systems and Technology section of the White House Office of Administration states: "Department of Justice was notified by the Office of Administration, General Counsel about the loss of the Vice President's E-mail files." As I have pointed out before, the Justice Department has a serious conflict. Not only are you investigating your own political party's candidate for the presidency, you are investigating your own lawyers. Many questions naturally follow this new revelation. For example:

- Did your subordinates notify the Task Force?
- Did your subordinates have an ethical responsibility to notify Congress?
- Did your subordinates notify the Independent Counsels?
- Should your subordinates have relied on attorney-client privilege as a rationale for not informing the Campaign Financing Task Force, Congress, or independent counsels about the failure to search e-mail records at the White House, is the crime-fraud exception to the attorney-client privilege implicated?
- Did your own subordinates work to keep this matter from public prominence, which in turn would have had a negative impact on civil litigation?
- Now that you know about this matter, do you feel personally comfortable in conducting this investigation, given the centrality of this issue to your own political party's candidate for the presidency?
- Given the reality that any practical decisions made regarding how to proceed with this investigation will necessarily involve a trade-off between moving forward vigorously now to preserve evidence and testimony, and leaving the matter until after the presidential election, should you be in charge of making that decision?

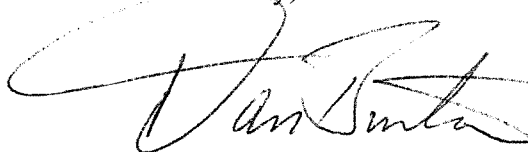
These are important questions, and your approach to answering them will be of great consequence to the success – or continued failure – of the e-mail investigation.

In short, the failure to move swiftly on the e-mail matter, and the failure to follow significant factual developments, can only be seen as an extension of failures in the campaign finance investigation. If you don't ask questions, and if you don't subpoena documents, you don't get answers to questions. Even if you have excuses for why the Justice Department prosecutors did not interview witnesses in a timely fashion, you cannot successfully explain away the appearance that something is wrong. Furthermore, it should be a personal embarrassment for you to have to rely on such flimsy excuses. Just as with the failure to ask the Vice President about the Hsi Lai Temple event until

April of 2000, it is not reassuring to see the same pattern of inattention to detail in the e-mail case.

Now that you have elected not to appoint a special counsel to investigate the e-mail matter, it is my fervent hope that you will at least request your subordinates to move with more dispatch. I have frequently heard you say that you will go wherever evidence takes you. The surest way to guarantee inactivity, however, is to refrain from collecting evidence. While I am aware that your lawyers have talked to some individuals, they have been far from diligent. Indeed, just two days ago, a witness with significant probative information informed the Committee that he had not been interviewed by the Justice Department. Therefore, I request, in the strongest terms possible, that you order your staff to commence a serious investigation of possible obstruction of justice and intimidation.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Burton". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail that extends to the right.

Dan Burton
Chairman

cc: The Honorable Henry A. Waxman
United States District Judge Royce C. Lamberth
Louis Freeh, Director of the Federal Bureau of Investigation
Independent Counsel Robert Ray
Independent Counsel Ralph Lancaster
Independent Counsel Donald Smaltz
Independent Counsel David Barrett
Independent Counsel Carol Elder Bruce
Independent Counsel Curtis Von Kann
Members, Committee on Government Reform